

SA2004RF0019

May 4, 2003

Ms. Tricia Knight
Initiative Coordinator
Office of the Attorney General
State of California
PO Box 994255
Sacramento, CA 94244-25550

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INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Re: Request for Title and Summary for Proposed Initiative

Dear Ms. Knight:

Pursuant to Article II, Section 10(d) of the California Constitution, we are submitting the attached proposed statewide Constitutional Amendment ballot measure the "Parents' Right to Know and Child Protection Initiative" to your office and request that you prepare a title and summary of the measure as provided by law. We have also included with this letter the required signed statements under California Elections Code section 9608, and payment in the amount of \$200.

Thank you for your time and attention to this important matter. Should you have any questions or require additional information, please contact Mr. Paul E. Laubacher at 2555 Rio de Oro Way, Sacramento, CA 95826, Phone (916) 381-5222.

We are both registered to vote at the address above.

Very Truly Yours,

Paul E. Laubacher, R.N.

Barbara R. Laubacher, R.N.

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AFFIDAVIT

I, Paul E. Laubacher, acknowledge that it is a misdemeanor under state law (Section 18650 of the Elections Code) to knowingly or willfully allow the signatures on an initiative petition to be used for any purpose other than qualification of the proposed measure for the ballot. I certify that I will not knowingly or willfully allow the signatures for this initiative to be used for any purpose other than qualification of the measure for the ballot.

Paul E. Laubacher

Dated this 4th day of May, 2004

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INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

AFFIDAVIT

I, Barbara R. Laubacher, acknowledge that it is a misdemeanor under state law (Section 18650 of the Elections Code) to knowingly or willfully allow the signatures on an initiative petition to be used for any purpose other than qualification of the proposed measure for the ballot. I certify that I will not knowingly or willfully allow the signatures for this initiative to be used for any purpose other than qualification of the measure for the ballot.

Barbara R. Laubacher

Dated this 4th day of May, 2004

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INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO VOTERS

The Attorney General of California has prepared the following title and summary of the chief purposes and points of the proposed measure:

(Insert 100 word title and summary)

To the Honorable Secretary of State of California:

We the undersigned, registered, qualified voters of California, residents of the afore-described County (or City and County), on the signature page of this petition section, hereby propose an amendment to the Constitution of the State of California relating to parental notification prior to the performance of an abortion on a pregnant unemancipated minor, and petition the Secretary of State to submit the same to the voters of California for their adoption or rejection at the next succeeding general election or at any special statewide election held prior to the general election or otherwise provided by law. The proposed amendment reads as follows:

SECTION 1. Title

This amendment shall be known and may be cited as the Parents' Right to Know and Child Protection Initiative.

SECTION 2. Declaration of Findings and Purposes

The People of California have a special and compelling interest in and responsibility for protecting the health and well-being of children, ensuring that parents are properly informed of potential health-related risks to their children, and promoting parent-child communication and parental responsibility.

SECTION 3. Parental Notification

Section 32 of Article 1 of the California Constitution is added to read:

SEC. 32 (a) For purposes of this Section, the following terms shall be defined to mean:

(1) "Abortion" means the use of any means to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will, with reasonable likelihood, cause the death of the unborn child except that, for the purposes of this Section, abortion shall not mean the use of an intrauterine device or birth control pill to inhibit or prevent ovulation, fertilization or the implantation of a fertilized ovum within the uterus.

(2) "Medical emergency" means a condition which, on the basis of the physician's good-faith clinical judgment, so complicates the medical condition of a pregnant unemancipated minor as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.

(3) "Notice" means a written notification, signed and dated by a physician or his or her agent and addressed to a parent or guardian, informing the parent or guardian that the unemancipated minor is pregnant and that she has requested an abortion.

(4) "Parent or guardian" means either parent if both parents have legal custody, or the parent or person having legal custody, or the legal guardian of a minor.

(5) "Unemancipated minor" means a female under the age of 18 years who is unmarried and is not currently serving active duty in one of the military services of the United States of America and who has not been declared emancipated pursuant to state law, or a female for whom a guardian has been appointed because of a finding of incompetency. For the purposes of this Section, pregnancy does not emancipate a female under the age of 18 years.

(6) "Physician" means any person authorized under the statutes and regulations of the State of California to perform an abortion upon an unemancipated minor.

(b) Notwithstanding Article 1, Section 1, or any other provision of this Constitution or law to the contrary and except in a medical emergency as provided for in subsection (f), a physician shall not perform an abortion upon a pregnant unemancipated minor until after the physician or the physician's agent has first provided written notice to a parent or guardian either personally as provided for in subsection (c) and a reflection period of at least forty-eight (48) hours has elapsed

after personal delivery of notice; or until the physician can presume that notice has been delivered by mail as provided in subsection (d) and a reflection period of at least forty-eight (48) hours has elapsed after presumed delivery of notice by mail; or until the physician or the physician's agent has received from a parent or guardian a written waiver of notice as provided for in subsection (e); or until the physician has received a copy of a waiver of notification from the court as provided in subsection (h) or (j). A copy of any notice or waiver shall be retained with the unemancipated minor's medical records. The physician or the physician's agent shall inform the unemancipated minor that her parent or guardian may receive notice as provided for in this Section.

(c) The written notice shall be delivered to the parent or guardian personally by the physician or the physician's agent. A form for the notice shall be prescribed by the Department of Health Services. The notice form shall be bilingual, in English and Spanish, and also available in English and each of the other languages in which California Official Voter Information Guides are published.

(d) In lieu of the personal delivery required in subsection (c) of this Section, written notice may be made by certified mail addressed to the parent or guardian at the parent's or guardian's last known address with return receipt requested and restricted delivery to the addressee, which means a postal employee may only deliver the mail to the authorized addressee. To help ensure timely notice, a copy of the written notice shall also be sent at the same time by first class mail to the parent or guardian. Notice can only be presumed to have been delivered under the provisions of this subsection at noon of the second day after the written notice sent by certified mail was postmarked, not counting any days on which regular mail delivery does not take place.

(e) Notice of an unemancipated minor's intent to obtain an abortion and the reflection period of at least forty-eight (48) hours may be waived by a parent or guardian. The waiver must be in writing, on a form prescribed by the Department of Health Services, signed by a parent or guardian, dated, and notarized. The written waiver need not be notarized if the parent or guardian personally delivers it to the physician or the physician's agent. The form shall include the following statement: **"WARNING. It is a crime to knowingly provide false information to a physician or a physician's agent for the purpose of inducing a physician or a physician's agent to believe that a waiver of notice has been provided by a parent or guardian."** The waiver form shall be bilingual, in English and Spanish, and also available in English and each of the other languages in which California Official Voter Information Guides are published.

(f) Notice shall not be required under this Section if the attending physician certifies in the unemancipated minor's medical records the medical indications supporting the physician's good-faith clinical judgment that the abortion is necessary due to a medical emergency as defined in subsection (a)(2) of this Section.

(g) Notice shall not be required under this Section if waived pursuant to this subsection. If the pregnant unemancipated minor elects not to permit notification of a parent or guardian, she may file a petition with the juvenile court. If, pursuant to this subsection, an unemancipated minor seeks to file a petition, the court shall assist the unemancipated minor or person designated by the unemancipated minor in preparing the petition and notices required pursuant to this Section. The petition shall set forth with specificity the unemancipated minor's reasons for the request. The court shall ensure that the minor's identity be kept confidential and that all court proceedings be sealed. No filing fee shall be required for filing a petition. An unemancipated pregnant minor shall appear personally in the proceedings in juvenile court, and may appear on her own behalf or with counsel of her own choosing. The court shall, however, advise her that she has a right to court-appointed counsel upon request. The court shall appoint a guardian ad litem for her. The hearing shall be held by 5 p.m. on the second court day after filing the petition unless extended at the written request of the unemancipated minor, her guardian ad litem, or her counsel. Notice shall be given to the unemancipated minor of the date, time and place of the hearing on the petition. Judgment shall be entered within one court day of submission of the matter. The judge shall order a record of the evidence to be maintained, including the judge's written factual findings and legal conclusions supporting the decision.

(h) (1) If the judge finds, by clear and convincing evidence, that the unemancipated minor is sufficiently mature and well-informed to decide whether to have an abortion, the judge shall authorize a waiver of notification.

(2) If the judge finds, by clear and convincing evidence, that the unemancipated minor is not sufficiently mature and well-informed to decide whether to have an abortion, and notification of a parent or guardian is not in the best interests of the unemancipated minor, the judge shall authorize a waiver of notification. If the finding that notification of a parent or guardian is not in the best interests of the minor is based on evidence of physical, sexual, or emotional abuse by a parent or guardian, the court shall ensure that such evidence is brought to the attention of the appropriate county child protective agency.

(3) If the judge fails to rule within the time period specified in subsection (g) and no extension was requested and granted, the petition shall be deemed granted and the notice requirement shall be waived.

(i) If the judge does not make a finding specified in subsection (h)(1) or (h)(2) of this Section, the judge shall deny the petition.

(j) The unemancipated minor may appeal the judgment of the juvenile court by filing a written notice of appeal at any time after the entry of judgment. The Judicial Council shall prescribe, by rule, the practice and procedure on appeal and the time and manner in which any record on appeal shall be prepared and filed and may prescribe forms for such proceedings. These procedures shall require that the hearing shall be held within three court days of filing the notice of appeal. Notice shall be given to the unemancipated minor of the date, time and place of the hearing. Judgment shall be entered within one court day of submission of the matter. The appellate court shall ensure that the unemancipated minor's identity be kept confidential and that all court proceedings be sealed. No filing fee shall be required for filing a notice of appeal. Judgment on appeal shall be entered within one court day of submission of the matter.

(k) The Judicial Council shall prescribe, by rule, the practice and procedure for petitions for waiver of parental notification, hearings and entry of judgment as it deems necessary and may prescribe forms for such proceedings, and each court shall provide annually to the Judicial Council, in a manner to be prescribed by the Judicial Council to ensure confidentiality of the unemancipated minors filing petitions, a report, by judge, of the number of petitions filed, the number of petitions granted under subsections (h)(1) or (h)(2), deemed granted under subsection (h)(3), denied under subsection (i) and granted and denied under subsection (j), said reports to be publicly available unless the Judicial Council determines that the data contained in individual reports should be aggregated by court or by county before being made available to the public in order to preserve the confidentiality of the unemancipated minors filing petitions.

(l) The Department of Health Services shall prescribe forms for the reporting of abortions performed on unemancipated minors by physicians. The report forms shall not identify the minor by name. The forms shall include the identity of the physician who performed the abortion, the facility where the abortion was performed, the date of the procedure and the minor's date of birth, the duration of the pregnancy, the type of abortion procedure, and if the abortion was performed

after a notice made under subsections (c) or (d); or if it was an emergency abortion performed under subsection (f); or if it was performed after a waiver of notification pursuant to subsections (e) or (h)(1), or (h)(2), or (h)(3) or (j).

(m) The physician who performs an abortion on an unemancipated minor shall within one month file a report concerning it with the Department of Health Services on forms prescribed pursuant to subsection (l).

(n) The Department of Health Services shall compile an annual statistical report from the information specified in subsection (l). The annual report shall not include the identity of any physician who filed a report as required by subsection (m). The compilation shall include statistical information on the numbers of procedures by month, the minors' ages, the duration of the pregnancies, the types of abortion procedures, and the numbers of abortions performed after notices made under subsections (c) and (d); the numbers of emergency abortions performed under subsection (f); and the numbers performed after waivers of notification pursuant to each of subsections (e), (h)(1), (h)(2), (h)(3), and (j). The annual statistical report shall be made available to the public.

(o) Any person who performs an abortion on an unemancipated minor and in so doing knowingly or negligently fails to comply with the provisions of this Section shall be liable for damages and reasonable attorney's fees in a civil action brought by the unemancipated minor, her legal representative, or by a parent or guardian wrongfully denied notification. A person shall not be liable under this Section if the person establishes by written evidence that the person relied upon evidence sufficient to convince a careful and prudent person that the representations of the unemancipated minor or other persons regarding information necessary to comply with this Section were bona fide and true. At any time prior to the rendering of a final judgment in an action brought under this subsection, the parent or guardian may elect to recover, in lieu of actual damages, an award of statutory damages in the amount of \$10,000. In addition to any damages awarded under this subsection, the plaintiff shall be entitled to an award of reasonable attorney fees. Nothing in this Section shall abrogate, limit, or restrict the common law rights of parents or guardians, or any right to relief under any theory of liability that any person or any state or local agency may have under any statute or common law for any injury or damage, including any legal, equitable, or administrative remedy under federal or state law, against any party, with respect to injury to an unemancipated minor from an abortion.

(p) Other than an unemancipated minor who is the patient of a physician, or other than a physician or a physician's agent, any person who knowingly provides false information to a physician or a physician's agent for the purpose of inducing the physician or the physician's agent to believe that pursuant to this Section notice has been or will be delivered, or that a waiver of notice has been obtained, or that an unemancipated minor patient is not an unemancipated minor, is guilty of a misdemeanor punishable by imprisonment in a county jail for up to 180 days or a fine of up to \$1,000, or both.

(q) Except in the case of a medical emergency, as defined in subsection (a)(2), no abortion shall be performed or induced on an unemancipated minor except with the consent of the unemancipated minor herself.

(r) An unemancipated minor who is being coerced by any person through force, threat of force, or threatened or actual deprivation of food or shelter to submit to giving consent to undergo an abortion may apply to the juvenile court for relief. The court shall give the matter expedited consideration and grant such relief as may be necessary to prevent such coercion.

(s) If any one or more provision, subsection, sentence, clause, phrase or word of this Section or the application thereof to any person or circumstance is found to be unconstitutional or invalid, the same is hereby declared to be severable and the balance of this Section shall remain effective notwithstanding such unconstitutionality or invalidity. Each provision, subsection, sentence, clause, phrase or word of this Section would have been approved by voters irrespective of the fact that any one or more provision, subsection, sentence, clause, phrase, or word might be declared unconstitutional or invalid.

(t) Except for the rights, duties, privileges, conditions, and limitations specifically provided for in this Section, nothing in this Section shall be construed to grant, secure, or deny any other rights, duties, privileges, conditions, and limitations relating to abortion or the funding thereof.